

City of Santa Fe, New Mexico

memo

TO: MAYOR AND CITY COUNCIL
FROM: ZACK SHANDLER, ASSISTANT CITY ATTORNEY *ZS*
SUBJECT: STREET PERFORMER ORDINANCE REVIEW
DATE: 10/20/14 FOR 10/29/14 MEETING
CC: KELLEY BRENNAN, CITY ATTORNEY

BACKGROUND

City Code Section 23-8.8 states that the street performer ordinance shall be reviewed by the City Council no later than October 30, 2014.

HISTORY

On April 30, 2014, the City Council voted to make several changes to the city ordinance governing "street performers on public property" in Chapter 23 of the City Code. In September 2014, a three question public survey was created on the City Attorney's page on the City web site regarding the public input on the changes to the ordinance. There was also a press release. This survey was emailed or hand delivered to the Santa Fe Buskers Alliance, the Downtown Merchants Association and a variety of buskers and art and food vendors on the Plaza. (Enclosed are 61 pages of documents).

RECOMMENDATION

I defer to the Councilors if they wish to introduce new legislation.



2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Please explain below.

During this past summer the Police did not have as many infractions as years past. We did have some violations but not as many!

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

Please explain below.

Having the police in the downtown area helped with enforcement but also was an educate the public and buskers on the new regulations.

3. What would you change or add to for the Street Performer Ordinance?

There needs to be stricter enforcement on who is allowed on permit. Tom Duck. Is a constant problem. we can only do so much need City's help.

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Zashandler@ci.santa-fe.nm.us by October 15, 2014.

Thanks for responding!



2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Please explain below.

The plaza is much more enjoyable, clean, and inviting

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

Please explain below.

Yes, somewhat. Police congregate but do not often walk the nearby streets. Many vagrants and "buskers" now gather at fountain on corner of water + Don Gaspar - and play music for extended periods of time

3. What would you change or add to for the Street Performer Ordinance?

Ordinance seems fine, perhaps more enforcement. Also, performers seem to have free rein after 3pm all over Plaza and nearby streets

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2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Please explain below.

The FACT that the ordinance GOT STRICKER MORE BUSKERS WERE in fear OF GETTING CITED; therefore this Caused the BUSKERS to "Police" themselves AND in CASES in the PAST where we had problematic BUSKERS those persons DID NOT Perform.

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

Please explain below.

This WAS NOT Just Good enforcement But Also for EDUCATIONAL Purposes.

3. What would you change or add to for the Street Performer Ordinance?

I would ADD MORE OR SPECIFIC INFORMATION when it Comes to SELLING OR GIVING "GIFTS OR DONATIONS" when a CITIZEN GIVES/DONATES MONEY TO A BUSKER. IF we have something that says NO GIFTS OR DONATIONS shall be Given for money received AFTER A performance. This would eliminate the THOMAS DUKET and others Problem.

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2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Please explain below.

WHEN YOU TRY TO POLICE ARTISTS,
NOTHING GOOD HAPPENS - LET
THE MUSICIANS WORK IT OUT ON
THEIR OWN AND END STREET
PERFORMANCE REGULATIONS - - - -

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

Please explain below.

(JOHN LENNON WAS HORRIFIED BY THE USA POLICE STATE)
JOHN LENNON SAID IN BLUE JAY WAY: "GO
ASK A POLICEMAN ON THE STREET,
THERE'S SO MANY THERE TO MEET...."
SANTA FE POLICE ARE NOT ANY BETTER
THAN ALBUQUERQUE POLICE - UNEDUCATED, VIOLENT
THUGS IN POLICE UNIFORMS WHO ARE UNCONSCIOUS,
CORRUPT, VIOLENT & DO NOT ENFORCE LAWS - WE NEED
LESS POLICE ON THE PLAZA - OH, AND THEY ARE RACISTS -
THEY ARE MINDLESS ROBOTS - THEY ARE
DANGEROUS !!

3. What would you change or add to for the Street Performer Ordinance?

THE MAJOR WANTS CARS OFF THE PLAZA - LET'S
GET ALL THE CLOCKWORK ORANGE SANTA FE
POLICE OFF THE PLAZA & RETURN IT TO THE
PEOPLE. ——— END THE STREET PERFORMANCE
ORDINANCE..... ☆

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2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Please explain below.

IT'S NO LONGER AN "OUT-OF-CONTROL CACOPHONY."

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

Please explain below.

THE STAGE IS NO LONGER A "CRASH PAD."

3. What would you change or add to for the Street Performer Ordinance?

ALL BUSKERS MUST AUDITION (PROVE THEY HAVE TALENT)... SOME PLAY THE SAME "8 BARS" OVER & OVER FOR 2HRS?

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2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Please explain below.

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

Please explain below.

3. What would you change or add to for the Street Performer Ordinance?

Some musicians need an amp in order to be heard. I want to hear them anytime not only 1-3 pm.

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2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Please explain below.

I feel that the new ordinance has allowed for both vendors and street performers to come to a mutual agreement on what their needs may be and how to approach one another about remedying them.

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

Please explain below.

The increased police presence has been a key factor in maintaining a peaceful environment for all people to enjoy. They are able to mediate and/or enforce and all issues that either vendors or street performers may have.

3. What would you change or add to for the Street Performer Ordinance?

I think the new ordinance has done wonderfully by both sides, vendors/street performers. I would hope that as time goes on that the city and police department continue to enforce and all issues that pertain to all of us.

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Thanks for responding!

*Thank you
Andres Calderon
D. Moore*



2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO The plaza has become filthy and noisy. It has a flea market atmosphere constantly being accosted by homeless, teenagers etc, for money, the music and other performances typically aren't great. The quality of the plaza atmosphere was peaceful, serene, now it's just plain awful.

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO cannot be the answer to the problem. You, as city councilor created the problem by trying to please everyone, being "politically correct" say no once in awhile - we all need to make a living but really street performers?

3. What would you change or add to for the Street Performer Ordinance?

Get rid of it. We always felt the Plaza still belongs to the locals, but I am truly disappointed with the street performers - it's an embarrassment.

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Thanks for responding!

10/10/14

Marie Gutierrez
District 4



2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Please explain below.

It helped cut down on musical chaos + gave more space + rules to follow for the performers. It is definitely needed -

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

Please explain below.

The police presence helped enforce the ordinance - But now, in the autumn - there hardly is a police presence + people stay longer + play all day - A police presence is good on the plaza, + needed - to enforce the ordinance

3. What would you change or add to for the Street Performer Ordinance?

Make sure the volume is compatible with the plaza + that people can actually play music + adhere to the rules.

The tables on the plaza square were really great - near the gazebos, etc. - really fantastic

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2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Please explain below.

Ordinance needs to give more discretionary powers to arrest habitual offenders of the ordinance.

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

Please explain below.

Police presence is an outstanding resource for tourist. The bike team definitely make citizens feel safe.

3. What would you change or add to for the Street Performer Ordinance?

Stricter fines, possible incarceration after a second offense

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2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Somewhat. Some buskers are more responsive to the merchants needs

Please explain below.

When the busker is playing too loudly, some buskers get angry and play even louder.

I have not seen an increase in the level of talent. But at times there are fewer buskers. I do however, see a tremendous increase in beggars - some of whom are very aggressive

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

The Police are very helpful to me when buskers are fighting & when the homeless beggars are aggressive.

Please explain below.

We have too many beggars on the street who are NOT abiding by the laws which state the beggar should not verbally ask for money, but hold a card which asks the question in writing

3. What would you change or add to for the Street Performer Ordinance?

I would like to see a committee of professional musicians properly judge the applicants to see if the busker applicant has enough talent to perform.

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2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

NO

Please explain below.

The ordinance has created much confusion. It is not properly enforced, the police make up their own rules, even to the extent of requiring a street performance license from performers that have been invited to play on public property. The administrative staff of the city business office has taken it upon themselves to judge who can and cannot busk, and asks applicants inappropriate questions that leads the applicant down a path of denial.

The ordinance leaves volume levels to subjective interpretation. Performers become targets of those on the plaza who just do not like busking.

The banning of amplification on the plaza denies those of us with instruments that require amplification in order to be heard or even produce music at all the right to perform.

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

NO

Please explain below.

The police are not properly trained in the enforcement of the ordinance. The enforcement is capricious and unique to each enforcing officer. Performers have been silenced because a police officer deems that they cannot perform in a certain public space that has no restrictions on it within the statute. Performers have been silenced due to the subjective noise regulation. Performers have been silenced for performing without a license on private property at the invitation of the owners of the business or property. Performers have been cited for using amplification outside of the two hour limited daily slot on the Plaza after having been told by law enforcement that they could use their amplifier as long as they "kept it down." Performers have been silenced because they chose to busk in the closed off streets. There are many other incidents of subjective individual enforcement.

3. What would you change or add to for the Street Performer Ordinance?

The ordinance has not fulfilled its intended purpose to “ensure the ability of street performers to perform in public spaces and promote harmony among street performers, local businesses, permitted event sponsors, residents and visitors to Santa Fe.” It has had an opposite chilling effect. Essentially, the revised ordinance has diminished the presence of street performers to the benefit of merchants and vendors. It is a tool to get rid of us for those businesses and persons. Though the merchants and vendors may have benefitted and obtained satisfaction, the revision has been detrimental to us.

For me, busking in Santa Fe has become fraught with conditions, rules, and boundaries that makes me feel like I am putting myself at risk of criminal liability if I perform on the streets in Santa Fe. Most of these conditions, but not all, are not a result of the ordinance but in its enforcement. I no longer can enjoy my time performing downtown or on the Plaza as I constantly have to look over my shoulder to see who might call the police on me just because they can, who might be approaching me to shut me down or what individually subjective boundary I have crossed. Since the inception of the modified ordinance I have performed only twice on the plaza. I just don't feel safe.

There is a serious need of training in enforcing the ordinance. It is obvious that individual officers enforce the ordinance as they see fit, often enforcing things that do not even exist in the ordinance. The police department either needs extensive training in the enforcement, or perhaps the officers should not be enforcing the ordinance and perhaps the enforcement should be relegated to the public safety aides. Street performers have been silenced for busking too close together when they are actually performing together, busking without a license when one performer has a license and another doesn't, and for busking on private space by invitation of the owner of that space.

The city business office also needs training in licensing. They are simply to ask the type of performance and accept as general a description as possible and then issue the license. Busking in Santa Fe is not juried, and if it were the jury certainly is not the business office. If the performance is found in violation of the ordinance during performance then steps can be taken to remove the license.

Because the noise restrictions are subjective and allow a single individual to call down law enforcement on a performer, objective standards should be put in place. The city has repeatedly said that this is much too hard to implement. I feel that if police can be trained to use a taser, they can be trained to use a decibel meter, and that the refusal to do so and the department's defense of “it's just too hard” is inexcusable. Without objective standards, we do not feel confident that we can perform without harassment.

Amplification must not be limited to a scant two hours a day on the Plaza. This discriminates against those of us who play instruments that are naturally very quiet and need amplification to be heard at all over the background noise. Banning of amplification is merely a cosmetic look good feel good measure. Amplification does not mean loud, and when coupled with a true objective volume standard is no more of a problem than a blaring trumpet, banjo, or saxophone.

All language regarding criminal penalties for violating the busking ordinance must be removed from the code. As members of the public we are bound by the laws that govern us and busking does not need to be criminalized in order to enforce a busking ordinance. Enforcement should properly be provided through an administrative process and not a criminal one.

Thanks for your consideration,

George Robinson

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2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Please explain below. the ones that were here just to cause trouble + Panhandle are gone, there is order now. The Plaza is back to what it used to be and Tourists are commenting on how Great it is now. Great Job.

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

Please explain below. Absolutely! a lot of the buskers had Criminal back grounds and have moved on to other places. We need a police presence on the plaza From Mid Feb. Presidents day until the end of October.

- ③. What would you change or add to for the Street Performer Ordinance?

a lot of the buskers do not follow the 2 hour Rule. there is no need for amplification. Some buskers are very loud and Don't need it. they have to be made aware of the rules before they are issued a buskers license. the drugs have stopped ^{as well.}

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2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Please explain below.

It has removed music from the plaza unless there's a City sanctioned event. It has created a chilling effect on street performances. I have talked to 7 different street performers and they have said it has made them afraid to play and many of them have not played music since the Ordinance went into effect. It has created much confusion. Criminalizing violations of the Ordinance has not affected matters for the good but further marginalized street performers, making them into criminals should they violate sound ordinances.

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

Please explain below.

No. It creates a sense of a police state. Also the attitude of the police force is too much. Even for the law abiding citizen it feels like a police state and the attitude is not one of friendly protection and service, but searching for any violation in very aggressive and intimidating ways. This is due to the type of training being received as well.

3. What would you change or add to for the Street Performer Ordinance?
1. End the unconstitutional ban on amplification
 2. End the criminal penalizing in the ordinance
 2. end the requirement of description in the busking application

3. train your police and clerks to be friendlier to citizens and street performers and not treat them like criminals
4. End the plainly audible requirement-completely subjectively unconstitutional

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2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Please explain below.

I applaud the City's efforts to bring order to a previously chaotic situation.

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

Please explain below.

While the increased police presence on the Plaza was a productive step, it's unfortunate that there wasn't a full-time dedicated police presence. During the course of the summer of 2014, Plaza police would often cluster amongst themselves on the corner of Lincoln and San Francisco streets. Might be more effective if they'd break themselves apart and stroll the Plaza on their own. More importantly, the Plaza police presence was spotty and inconsistent. Sometimes they were there, sometimes they weren't.

3. What would you change or add to for the Street Performer Ordinance?

Ever seen the buskers in the New York City subway system? *Always high quality.* Not so in Santa Fe. There seems to be no aesthetic threshold by which buskers are granted permits. While it's probably not the City's job to be the arbiters of taste, I think the street performer permit process would benefit by weeding out the dudes with a guitar and a dog and the musical skills of a third grade beginning student. The City must remain vigilant in holding the line between street hustling/pan handling and legit artistic expression.

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2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

NO - They have made things a lot worse! I know because I am a busker myself.

Please explain below.

Things were much better before the changes were made. The majority of the Buskers were co-operating among themselves before a very few vendors and merchants used them as scapegoats for a failing economy. The musicians were bringing welcomed entertainment to the people that frequent the Plaza area, the tourists and many locals.

The way things are now has just about killed the spirit and joy the buskers brought to the Plaza. Many are fearful of being harassed by the many overly restrictive rules placed upon them. Many have lost the will to go through all the trouble caused by the new rules to share their wonderful talents freely with the public and the public suffers because of it.

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

NO – The buskers are NOT CRIMINALS!

Please explain below.

All that seems to be occurring is harassment by Police trying to enforce rules and regulations that violate the buskers' constitutional rights. The right to express oneself freely publicly and the public's right to do the same by offering tips in appreciation. This is not an act of commerce. It is freedom of speech and expression.

3. What would you change or add to for the Street Performer Ordinance?

I would go back to the rules that were in place before changes were made. At least they did not interfere so much with the spirit of street performing that gave Santa Fe its richness in musical art. Santa Fe is supposed to be the city different. It is different now but in a bad way. Bring back the difference that made it different in a good way.

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2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Please explain below.

Please see attached comments & photos

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

Please explain below.

— ABILITY to ENFORCE
Please see the attached comments & photos

3. What would you change or add to for the Street Performer Ordinance?

Please see attached comments & photos

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2014 Street Performer Ordinance Change Evaluation

1. Wow! Yes, we have enjoyed much improvement with the new Busker Ordinance changes. Matters such as amplification abuse, yelling, whaling and profanity and indecency in general have improved. Disrespect of our police officers seems to have improved as well. Just by viewing the attached photos I hope you can see some of the improvements. The quality of musicians seems to have improved and locals and visitors are enjoying the park in ways they have not been able to for a LONG time!
Because the amplification is limited to 2 hours on the Plaza, no one is overwhelmed by a Busker or several of them, amplified at one time. The noise level on the Plaza has greatly improved and folks are not inundated by one Busker or too many of them amplified at the same time. In fact, as you can see by the photos, we have had lots Buskers who are not amplified and are doing just fine! Their tip jars are full and for the most part they have been a pleasure to listen to within the 50 feet rule.
2. In the past we seemed to have had plenty of police coverage but an inability for the police officers to give a violation for the many abuses. This made it impossible for Police to improve the situations they encountered with Buskers. With the new ordinance the Police now have a way to issue a violation and monitor a Busker. Word has gotten out with regards to this and not only has this helped to weed out potential panhandlers and abusers but the quality of Buskers has improved on the Plaza for the most part and respect for the Police seems to have improved. Rules are followed and if they are not, Police now have a way to enforce them and that is proving to be a good thing.
3. Not all Buskers are compliant with their ordinance and abuses still continue. Buskers who continue to cause problems also admittedly say they have not bothered to even read the new ordinance. Unfortunately we still have Buskers such as Pedro who seem to think they are above reproach and have special privileges to monopolize the Plaza by playing 8+ hours of the day and continue to abuse the privileges given to them to play on the Plaza and our City streets. Buskers such as Pedro are not honest about the time they are on the Plaza and do not leave the Plaza for the 2 hours required before returning. They are loud beyond the 50 feet rule too. Buskers like him still have a problem self facilitating and this leads to arguments with other Buskers and Police. Some Buskers believe they are more restricted with regards to space on the Plaza but in fact if they would take a moment to read and compare the new ordinance and map with the old ordinance they would see a big improvement with regards to available space to perform on the Plaza. During the summer we have had one or two Buskers who insist they must be amplified in order to make any money but if you take a look at the photos we see there are plenty of tips being given to

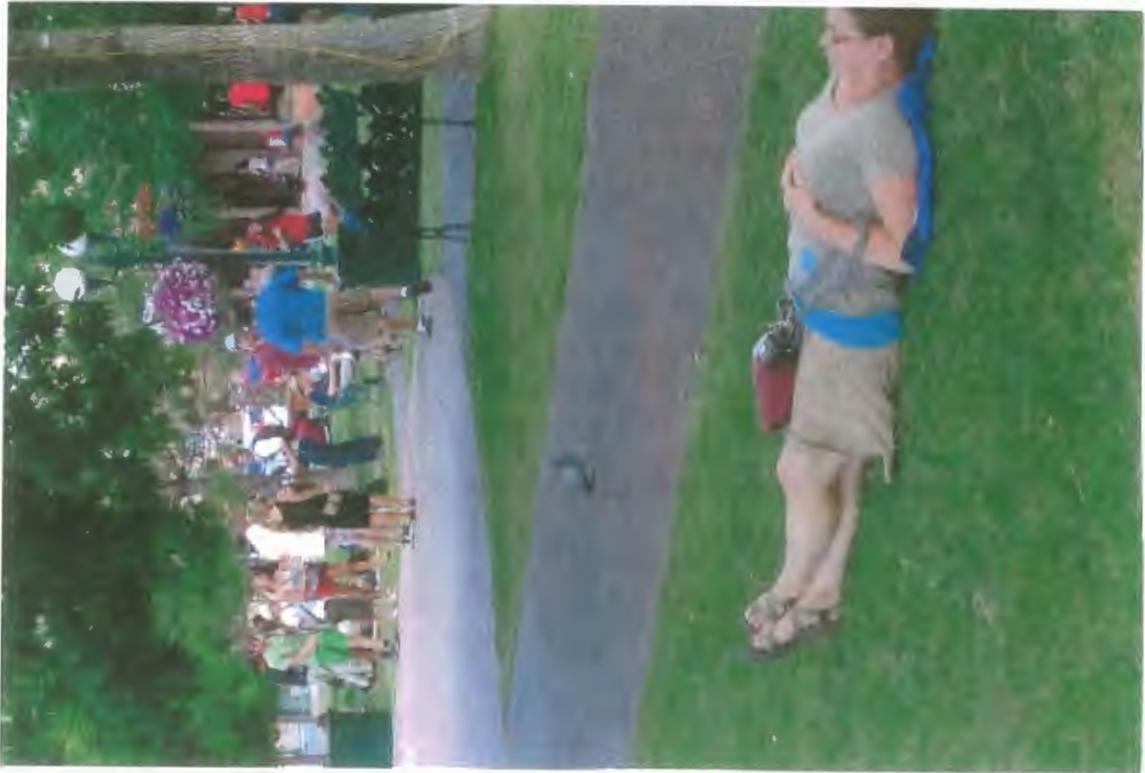
Buskers who are not amplified and comply with the 50 feet rule. Also, the two hour rule may be a bit much. Many Buskers have expressed they would prefer an hour. This would allow others the opportunity to perform during the day. One very big improvement has been keeping the Gazebo stage area closed. This has greatly improved the Plaza experience. We don't have the loitering and indecency we saw so much of. I do maintain that it is a privilege to use and perform on the Plaza Park and would like to see a substantial "Plaza User Fee" applied to Buskers who want to perform on the Plaza. Buskers are making a healthy living by using the Plaza, and just as Artist, Food Vendors, Special Event people or anyone who wants to use the Plaza must pay a fee so should the Buskers. This may even help to improve the kind of performers we allow on the Plaza. What takes place on the Plaza has the potential to draw people to the Plaza and Santa Fe or keep them away. All of us ought to have strong concerns for making the Plaza a safe, fun and attractive place for everyone.



One very big improvement has been keeping the Gazebo stage area closed. This has greatly improved the Plaza experience. We don't have the loitering and indecency we saw so much of and it has kept skateboarders from continuing to destroy the stage



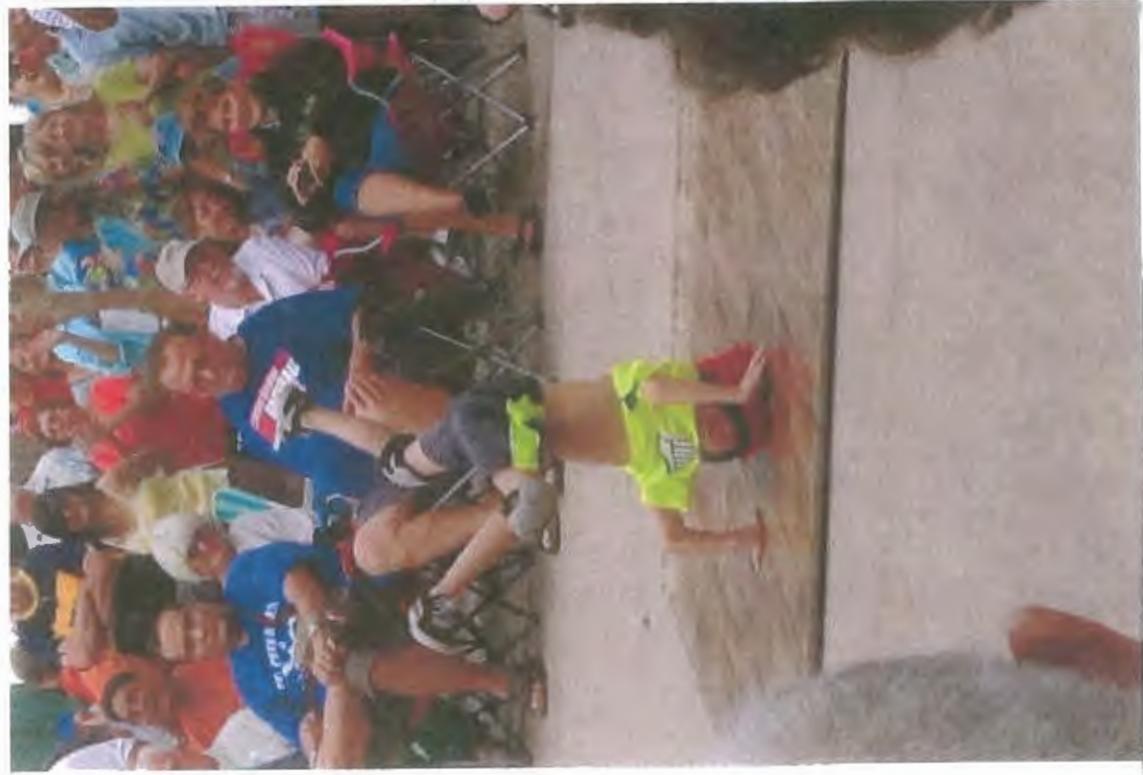
Because Buskers are not monopolizing the monument area as before and people are actually able to sit and take a break and enjoy the Plaza. In the past the noise levels were so loud that Buskers would simply clear out the Plaza.



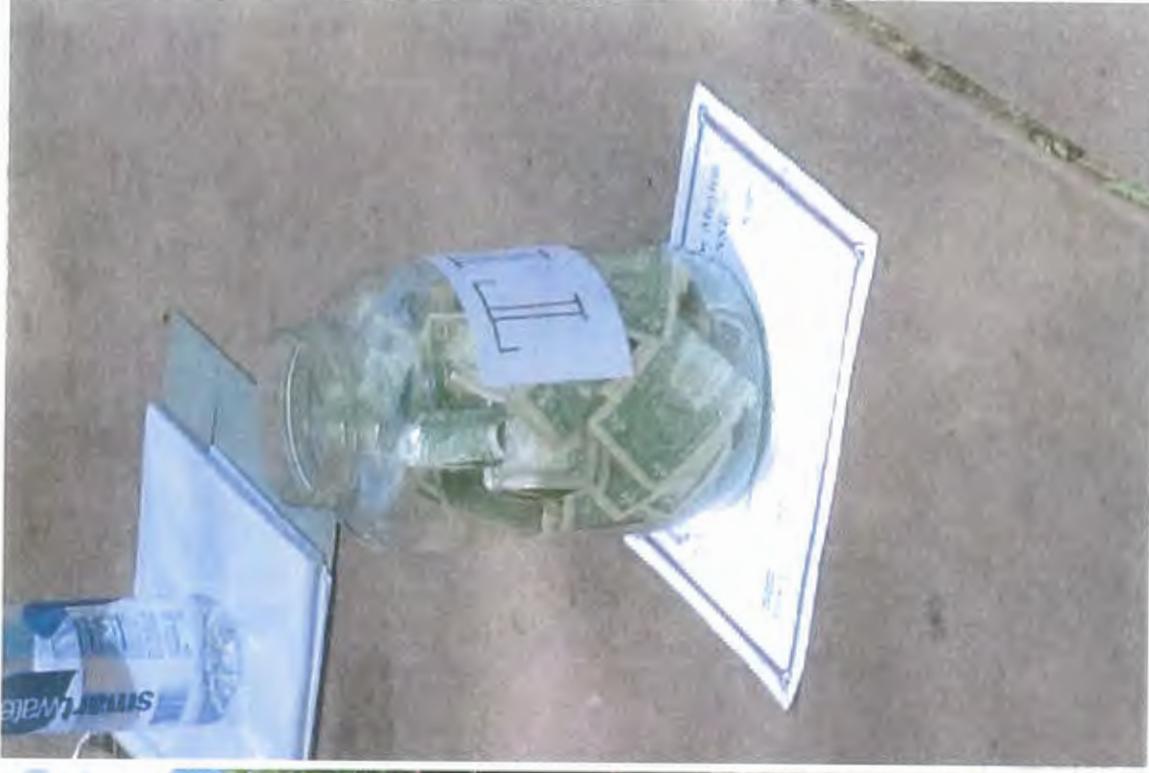
Locals and visitors are enjoying the park in ways they have not been able to for a LONG time!



Favorites like "The Girls" mariachi band continue to entertain on the Plaza and always draw a crowd. If you look closely you'll see a Bride and Groom taking advantage of the moment and Kettle Corn in the tip jar 😊



“Little Ricky” with Holy Faith Break Dancers is always a crowd pleaser and Little Ricky boasts of \$100 in tips in just 10 minutes... every time!



Because the police are able to enforce the ordinance, word has gotten out and this seems to have helped to improve the quality of Buskers on the Plaza.



As you can see by the photos, we have had lots of Buskers who are not amplified and are doing just fine! Their tip jars are full and for the most part they have been a pleasure to listen to within the 50 foot rule.



Because the amplification is limited to 2 hours on the Plaza, no one is overwhelmed by a Busker or several of them, amplified at one time. The noise level on the Plaza has greatly improved and folks are not inundated by one Busker or too many of them amplified at the same time.







Not all Buskers are compliant with their ordinance and abuses still continue. Buskers who continue to cause problems also admittedly say they have not bothered to even read the new ordinance. Unfortunately we still have Buskers such as Pedro who seem to think they are above reproach and have special privileges to monopolize the Plaza by playing 8+ hours of the day and continue to abuse the privileges given to them to play on the Plaza and our City streets. Buskers such as Pedro are not honest about the time they are on the Plaza and do not leave the Plaza for the 2 hours required before returning. They are loud beyond the 50 feet rule too. Buskers like him still have a problem self facilitating and this leads to arguments with other Buskers and Police.

Some Buskers believe they are more restricted with regards to space on the Plaza but in fact if they would take a moment to read and compare the new ordinance and map with the old ordinance they would see a big improvement with regards to available space to perform on the Plaza. During the summer we have had one or two Buskers who insist they must be amplified in order to make any money but if you take a look at the photos we see there are plenty of tips being given to Buskers who are not amplified and comply with the 50 feet rule. Also, the two hour rule may be a bit much. Many Buskers have expressed they would prefer an hour. This would allow others the opportunity to perform during the day.

SHANDLER, ZACHARY A.

From: Roark Barron <roarkbarron@gmail.com>
Sent: Wednesday, October 15, 2014 7:52 PM
To: SHANDLER, ZACHARY A.
Subject: 2014 Street Performer Ordinance Change Evaluation

2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES NOxxxx

Please explain below.

I felt it was too restrictive. After five years of successfully making a living, and feeding my daughter and myself, I was unable to succeed this past year. I play the harp, and people loved it and I felt it was a very positive addition to the diversity of the Plaza. Many have told me they miss what I shared, and certainly I miss the chance to share my 80 year old harp and HarpMobile with the public.

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES NO xxx

Please explain below.

Some confusion in enforcement. Not consistent. I would ask for sound meters instead of this blanket rules regarding amplification and volume. The Baby was thrown out with the bathwater.

3. What would you change or add to for the Street Performer Ordinance?

As a musician who has designed a special instrument that needs amplification, I was unable to play enough to support my needs. I am not loud. In fact other non amplified musicians are often louder. Banjos, accordions and singers who almost yell are louder then what I offer.

This really hurts me the most and I hope we can find away to fix this.

Please return completed evaluation to: Zachary Shandler, Assistant City Attorney (by delivery at City Hall at 200 Lincoln Avenue) or by email at Zashandler@ci.santa-fe.nm.us by October 15, 2014.

Thanks for responding!

Roark Barron
roarkbarron@GMAIL.com

Electro-Acoustic Harpist
Sonic Sculptor
www.RoarkBarron.com

3 La Posta Way
Santa Fe, NM 87505

RoarkBarron@gmail.com
1 [800] 283-HARP for orders
and booking
1 [505] 982-8546 Home

SHANDLER, ZACHARY A.

From: j. michael combs <combsj michael@gmail.com>
Sent: Wednesday, October 15, 2014 12:37 PM
To: g; Petra Babankova
Cc: SHANDLER, ZACHARY A.; Talia Kosh; Ben Baur; Michael Combs
Subject: Re: Busker's Ordinance Survey

j. michael combs' story, II

i was packing up my gear after finishing a performance on the santa fe bandstand on a monday in early july. the performance ended at 1p, and this was about 1:20p.

i saw a fellow busker, petra babankova, who plays classical guitar with a very small amp, set up in the shade of some trees on the plaza. then i saw her accosted by several police officers, and a few minutes later she was busking in the middle of palace avenue, just off the NW cnr of the plaza.

as soon as i could i went over and asked her what had happened. it was a very hot day for santa fe, like 90+, and that is very hard not only for the busker but also on a wooden musical instrument.

peta has already been limited to busking only two hours a day since recent city council decisions have enacted restrictions on amplifiers. she is one of the buskers who cannot work without an amp, and so is suffering a severe drop in work opportunities. also, the hours she is allowed to work, 1-3p, are the very worst hours for busking. everyone has had their lunch, they are drowsy, and they head for their hotel room for a nap if they are a visitor, or back to

work if they are a local. it is dead during the afternoon, after the lunch hour. morning, lunch hour, evening and night times are when people who work in the entertainment industry, including buskers, have opportunity to work. imagine yourself, whoever reads this, being forbidden to work more than two hours a day. could you support your family? (petra has 4 children) could you keep your house?

when i asked, petra told me the police had told her she was not allowed to busk the plaza area while equipment is set up on the bandstand. that means that from 10:00 a.m. until 10:30p.m., five days a week, during july & august, and evenings part of june, buskers are forbidden to participate in the tourism economy here in sta. fe.

i asked the police officers to explain this to me, they were unable. i asked the city events coordinator, the assistant city attorney, the Outside In director (who produces the santa fe bandstand), and none of them had any idea why this was, none of them had intended the rules to read that way. it was not written down anywhere like this. yet there it was, police stopping a busker from working.

in case you haven't heard her, petra plays beautiful, soothing, tasteful variety of music on her classical guitar, and supports herself, her children and aged parents on her musicians income, of which busking is a large portion. while we buskers often get gigs, quite often those gigs and CD sales are facilitated by the connections we make with people while out there

in the world, giving away our music for free. she plays "Bach to Beatles," and cannot be heard without the very slight amplification she uses. she is also a professional, has busked internationally, and never, ever rouses complaints. she invariably asks adjacent merchants and vendors before setting up, even while setting up in a place she's already played hundreds of times before. this is professional busker courtesy.

the upshot of it was that the police sargent, chris McCord, invented this interpretation himself, and instructed his officers to enforce it. when police make the laws, it is technically known as a police state.

it took me a lot of effort and phone calls to get this draconian, illegal restriction suspended. this is arbitrary, tyrannical, oppressive use of police power. to buskers, it is typical. we are viewed as low-status people, hardly meriting the rights of citizens, legitimate targets for police bullying.

On Tue, Oct 14, 2014 at 1:10 PM, g <harpleblues@gmail.com> wrote:
Forgot to attach.

On Tue, Oct 14, 2014 at 1:08 PM, g <harpleblues@gmail.com> wrote:
Zach,

Attached is my response. This is not the response of the Buskers Alliance, that will be coming to you shortly. This is my personal response.

Thanks,
George

Santa Fe Buskers Alliance - George Robinson

505-670-5372 harpleblues@gmail.com 837 Old Santa Fe Trail, Santa Fe New Mexico 87505

October 14, 2014

Zachary Shandler
200 Lincoln Ave
P.O. Box 909
Santa Fe, NM 87504-0909

Dear Mr. Shandler

The Santa Fe Buskers Alliance welcomes your request for input on the effects of the modified street performers ordinance, and this is our response.

The ordinance does not meet its stated purpose which is “to ensure the ability of street performers to perform in public spaces and to promote harmony among street performers, local businesses, permitted event sponsors, residents and visitors to Santa Fe.” The ordinance as modified has curtailed street performance in Santa Fe. This view is supported through the Alliances many conversations with street performers in Santa Fe since the passing of the New Ordinance by the City.

- I. In part, the preponderance of curtailment lies in **the failure to enforce the ordinance properly**. We do not know when and where it will be safe to perform. This has created a true and tangible chilling effect on the entire population of street performers in Santa Fe. Many of them who would play regularly, have not played at all since the passing of the new Ordinance making it a criminal offence for violations of sound and amplification.
 - A. It is clear **proper training in the handling of this ordinance is not being conducted**. Police officers have individual and capricious interpretations of the Ordinance and we have found that our performances can be cut short at any time for subjective interpretations, often not based on the black letter law of the Ordinance, and we can face criminal penalties at any time for any or no reason.
 - B. This improper training and enforcement is exacerbated by the fact that no one has easy access to the new Ordinance as the City has failed to publish the Ordinance on their website, leaving the old Ordinance on the website and creating incredible confusion about the law. This confusion is a pattern which occurred prior to the new ordinance being approved. All were confused about the amendments and these proposed amendments changed multiple times without any public awareness of the changes or their rationales and purposes. Some examples of this capricious enforcement are as follows:

Example 1: When the streets on The Plaza were closed this summer, 2014, a street performer attempted to use the new open area as a performance space. She found that **her ability to use the space seemed to depend on which police officer saw her using the space**. At times she was able to perform without disturbance. At other times a police officer ordered her to close down her

act. She found the enforcement of the ordinance so vague that she no longer attempts to use the space.
Conclusion: the law is applied selectively and arbitrarily

Example 2: A street performer was cited for using amplification on The Plaza outside of the stated allowable hours of 1-3pm. This occurred after been first given permission by a Santa Fe police officer. When the performer appeared in court the judge summarily dismissed the case, without testimony by the accused, having found no grounds for the citation. This is due to the fact that the City has not posted the new Ordinance on the City's website, making it impossible for anyone to know the scope of the new law. This has created further chilling effects on legal performances.

Example 3: Police arbitrarily determine where and when street performance may or may not happen in the downtown area. Performers have been ordered to move from well-established busking spots with no other reason given than "you can not perform here." **Our ability to perform in any specific area depends on the day and the officers that happen to pass by.**

Example 4: There is confusion over what is deemed to be a "City" event, during which times street performance is prohibited. **Street performers have been shut down this summer during the set up for the Santa Fe Bandstand performances. They have been ordered to leave the Plaza by the police because they have been instructed that street performance is to be denied there any time there is equipment on the stage.** Oftentimes there is equipment on the stage from 10am until 10pm during the Santa Fe Bandstand. **The Plaza as a performance space is unusable all summer.**

Example 5: Street performances of groups of people are sometimes shut down because police do not understand the umbrella of the street performer's license allowing only one license among a group of performers. Performers have been told that each and every performer must have an individual license.

Example 6: On the other hand, licensed street performers who wish to play together are sometimes denied the ability to do so. On more than one occasion licensed street performers have been required to stop performing because their performance violates the ordinance which states that street performers maintain a minimum fifty foot separation between each other. **Police fail to understand that their performance is a combined performance.**

- To go even further, **unlicensed performers under the umbrella of a licensed performer have been denied the right to perform because of lack of license.**

Example 7: Police stopped a performance on private property on canyon road, stating that the busker needed a license, which was completely false. This demonstrates a total failure to train police as to the scope of the license and that a license is NOT REQUIRED on private property when permission of the property owner had been granted. This performer was performing on a private patio when stopped by police. The owner of the property was present and told the officers that he had given this performer permission, but to no avail. **The police shockingly would not allow this private**

performance to take place, a gross and serious First Amendment violation. The owner of the property actually gave the performer money to go get a license so she could perform for him privately.

Example 8: In addition to police enforcement, **street performers have not been treated fairly when attempting to obtain and apply for a license.** Just as we warned the City prior the passage of the new Ordinance, requiring street performers to describe the nature of their performance has created a prior restraint that is unconstitutional. **The city business office staff has taken it upon themselves to turn street performance into a juried process** and have taken on the power to determine what types of street performance is allowable. **Should a street performer describe their performance as a mixed media performance, for example, they have been denied a license.** They also have not been trained on the Ordinance and ask unnecessary qualifying questions, and demand information and certifications that are not required by the statute to obtain a license. We have documented the following incidents:

- A street performer **was denied a license** because the staff determined, after several pointed and unnecessary questions, that her performance did not qualify for a license.
- A street performer was **denied a license** because the City office deemed her performance a business rather than performance. Her performance was merely a live demonstration of the creative process resulting in a tangible result. She was told to begin the application process for a vendor's permit. **This denial is a prior restraint and is unconstitutional.**
- A tax ID was demanded of a street performer. **The license was denied** because of lack thereof.
- An individual requested a street performer license on behalf of a group. The street performer was traveling and desired to perform for only a few days. **The performer was denied a license** because all members were not present to provide their photo IDs and signatures to the application. This despite Section 23-8.4 paragraph B of the Street Performers Ordinance.

Lack of education in proper enforcement this ordinance is certainly a problem, and creates a sense of endangerment among street performers. We have to watch our backs at all times lest we step outside the unknown and subjective and arbitrary boundaries that not even City officials, officers and employees understand, in order to avoid criminal penalties. If we have a law, it must be properly and fairly enforced.

- II. **But education is not enough. We request amendments be made to the Ordinance on portions that have been used by individuals to curtail our expression.**

- A. Chief among these is the **subjective fifty foot audibility provision**. This article is extremely subjective and has served to empower certain street performance unfriendly members of the Plaza community to shut down street performers arbitrarily and selectively. The arbitrariness and selectivity being experience by street performers is built into the law. It is risky enough to perform under current enforcement of the ordinance. The potential to shut us down without a valid legal basis and at the whim of one person only adds to our distress and is a restraint to our freedom of expression. **An objective standard regarding acceptable volume levels is already in the city code**. This should be sufficient. Street performers would be happy to abide by this standard as it is objective, just, and proper and will remove at least one prior restraint.
- B. Additionally **we request the City remove the restriction on amplification**. The rationale for this section of the Ordinance is based in the false premise that amplification means louder and fails to address the prejudice in restricting certain instruments and performers that cannot be heard over the ambient noise of the Plaza. **Some performers simply cannot perform with an amplification restriction in place**. Amplification is currently allowed for 2 hours a day. This is (1) an arbitrary time-period, not based on any rationale and (2) is an insufficient amount of time for street performers to make a living and provide for their families.
- a. **We know of at least four performers who are restricted by this prejudice**. One is an accomplished classical guitarist, one is an orchestral harp player, one plays the Native American flute, and the last performs with an electric keyboard which has no ability to produce sound without amplification. These people are denied their right to free expression. Though they have two hours every day, this means that they have to fight for their spot and their performance times are severely restricted. Amplification combined with an objective volume standard will meet the city's need to restrict volume.
- b. **Please see some of the narratives from these street performers attached to this letter**. "Petra's Busking Stories" is particularly compelling as she discusses that she cannot play loud enough with her nylon string guitar and her soft voice to be able to perform on the streets and make money without a small, battery-powered amplifier, the only kind that is not allowed. She has children. Playing for two hours a day is not sufficient to be able to provide for her family. This Ordinance as arbitrarily written on amplification affects her right to earn a livelihood.
- C. **The requirement that street performers be 50 feet away from other street performers should be removed**. This is unnecessary and the City should not be regulating conduct between street performers when we have adamantly stated we can govern our own conduct and create rules for such conduct. We do not wish to be micro-managed by

the City. We can govern conduct among street performers. This has led to undesired results that contradicts the spirit and expression of street performances. Sometimes street performers actually want to be closer than 50 feet from each other as it boosts their individual performances. This is an arbitrary and unnecessary restriction on expression.

- D. Lastly, but most importantly, **the Street Performers Ordinance still contains language that imposes criminal penalties for busking.** This is unnecessary. None of us want to risk becoming criminals for bringing beauty to Santa Fe. The police department claims they need criminal penalties to enforce the ordinance. This is not true. **We, as street performers, fall under the same laws as the general public and can be removed from any public place for violation of those laws.** If we are breaking laws during our performance we can certainly be removed, cited or arrested. If we are violating the uncodified terms of the Street Performers Ordinance we should be subject to administrative action and not criminal penalty. As you see above, one judge has already thrown a busking violation out of court.
- a. **At the City Council meeting** where the new Ordinance was passed, Councilor Dimas suggested “doing away” with the criminal penalty portion of the Ordinance. All Councilors seemed to agree, the crowd cheered. We all thought this item would be changed. But a formal Amendment was not made. Even though there was support for a formal Amendment. The people and the councilors have spoken on this issue and we demand that this be reflected in an amendment to the Ordinance.

In summary, the amended Street Performers Ordinance **has been a failure.** It has served to further divide the vendors from the performers and had obstructed the natural culture developed by and between street performers. It has not been properly enforced. Certain provisions of the Ordinance serve to provide a weapon to some of the Plaza community, and so it is arbitrarily enforced; allowing them to curtail our actions at will. **Proper education in enforcement must be provided and performance evaluated, the sound level determinations must be objective, amplification subject to objective enforcement must be allowed and criminal penalties must be removed.**

Attached to this response are a few individual narratives that we have collected. Thank you for the consideration of our input.

Sincerely yours,

George Robinson - Santa Fe Buskers Alliance

Talia Kosh-New Mexico Lawyers for the Arts

Buskers Narratives

Narrative 1: PETRA BABKANOVA - CLASSICAL GUITARIST

What do rules do to humans? I was trying to play guitar on the Plaza, according to the busking rules, and another guitar player was playing so loud, that he interfered with my performance, not far away. So, I came to this young man to ask him politely to please turn his volume down. An older listener "fan" of his came up encouraging the younger performer, "Don't listen to her. You can do whatever you want to. From one to three o'clock, you can play whatever you want." What an interpretation of a rule!

Another day, I came to play on the Plaza at one PM, as allowed by the busking rules. I set up. I started the first few notes and a policeman came to me, saying, "You cannot play!" "Why not?" I asked. "Because when the band stand is set up you cannot play," he replied. There is a performance on the band stand from noon to one, and from six in the evening to eight, so why can't we buskers play from one to five? !!!!!

Do you believe some buskers would not go to play their music on the Plaza because they are afraid of the police? Yes I believe it. I actually know how it feels. When you see a policeman coming from far away something freezes inside your body. (Just as when you hear the sirens and you see police lights behind car and you know you have done something wrong). Then you put your head down and you just wait till you see the black shiny shoes coming to you. Then you stop breathing and you somehow wish you were invisible. "What did I do?" I think to myself, "I just play music." How big a crime is it? And yet, the police tell you, "No you can't play. You have to move. The time is over. You're at the wrong spot." This letter is not meant to criticize police officers, who are just doing their jobs. I write this to show the reality of busking in Santa Fe. In America we can carry guns, but we cannot play music on the street. In Santa Fe, I need a special license that needs to be shown in order to perform music. With this special piece of paper we musicians are allowed to have freedom of speech. With this very specific permit, the City allows us to open our mouths. What the City means is, "Now don't forget that

you work for us and you play our game. Under our rules.” Well, where is the freedom? The freedom that every artist seeks. The freedom that make our brains work differently, that allows us to express what we have to share.

As a classical guitarist playing an acoustic instrument, I need low level amplification to be heard on the Plaza, if I don't want to hurt my hands. With the new busking rules I can only play from one to three PM. But, as a serious busker, I cannot make enough money to live and support my family, from only two hours of playing at these very exact times and specific locations. We all have different needs and these rules were made by people who are not buskers. It reminds me of the problems with Christus St. Vincent Hospital, where outside administrators from Texas that have no clue, run the hospital. Or in a communist regime, where the agriculture planning was done by someone who never saw a cow.

Who has the right to tell me I can't play? Who has the right to tell me to shut up? To tell me I can't share. To take away the fun. The world needs music. People need love. We need good energy and that's what the City of Santa Fe doesn't allow.

Have you ever walked in a city when you heard a street musician playing? It might have changed your day for better, brought nice memories.... The notes can travel like a butterfly touching hearts of those that are ready to be touched. These notes are meant to heal, to make people feel better. The music makes you laugh or cry and comes from the musicians hearts. What would life be without music? Is music only for concert halls? Why not play live music where people need it the most? In subways, in downtowns, in parks, in markets and in the streets. Where everyone can stay and listen. Some just pass by and don't even see, but music is there for those that hear.

Do not mistake us for the gagers and homeless people.

When I see people being touched by what I do, I know it is worth it, no matter how hard it might sometimes be. How little income I receive doesn't matter. What I love is to share, to be better and better in expressing myself musically. To fill those people that take time to listen, to make those seconds change

their day for the better, to open their hearts for a moment. It makes me sad to think that this beautiful way of sharing art is slowly disappearing from Santa Fe.

Santa Fe is unique in many aspects and the Plaza is certainly a center of its charm. What makes it alive are the people. Tourists and locals go to see what happening on the Plaza. The vendors and the food kiosks are there. But what about the entertainment? Kids want to see the balloon man or the magician and people of all ages love the music. There are all kinds of music. Something for every taste. Every one is happy. That's what we want. To have a good time and good memories from Santa Fe.

From what I have experienced in different cities around the world there are no rules that would make busking perfect. Some musicians may be self centered and unconsidered to others except for their audience. I think we need to educate every busker to be responsible for their performance and to be respectful to each other and to their surroundings but we don't need to over-regulate them and scare them away from our city.

I don't know what every person on the Plaza thinks, but I have only positive comments even if I play for hours, every day, at the same place. It seems that the longer I stay the more I become in tune with the people that are around me. For sure my endurance limits my stay and when I see other musician waiting to play we come to an agreement how to share the place. The 2 hours of playing is not enough for someone who depends on the money donated by people passing by.

If I play classical guitar where each note is important, I need an amplification.

Part of the art to play on the street is to guess when and where could be good to play. There are many variables and their combination is unique for each of us. It is very disturbing to have rules that determine those very important decisions for me.

Every restriction takes away the freedom that a musician needs in order to create the best ambiance for other. After all, that is what we strive for and that is also what brings us the best tips.

Today I am conscious that my music positively influences the vendors on the Plaza, the tourists and whoever is passing by. There are vendors who show me their appreciation by contributing to my tip jar. They tell me how my music helps them. Even the parking enforcement man comes and gives me a tip. People who work near the Plaza like to come on their break and listen.

We musicians spent hours over many years, to master what we do. We can play in freezing weather or in the full sun, fed or starving. We just want to share our love of music; we don't need rules to make our lives harder. We all need the music on the streets to make us alive, to make us dream.

Narrative 2: Roark Barron, Classical Harpist

Buskers are like the wild flowers and mushrooms on the mountains, and in the aspen forests above Santa Fe. Part of the pleasure of a walk in these beautiful surroundings is the surprise and discovery of these unexpected yet rewarding specimens, that may pop up where we might least imagine them.

They bring color and character to our journey. It has felt for the past 6 months, since the laws regarding busking were made more severe, like the flowers and mushrooms have been sprayed with a toxic substance to prevent their popping up, and sharing with the viewers and listeners their delightful smells, visual delights and musical passages. This toxic substance in the air has also had effects on those others that also have to breathe it, the tourists, visitors and locals, causing depression and lack of spontaneous musical inspiration. Our Plaza used to be a more diverse and interesting place, with variety and the unexpected now sorely lacking. Control and suppression are now becoming the new standard. Originality and artistic sharing are now relegated to special areas and limited times. A sign of the times or a spreading sickness that is taking away the most essential freedoms of those that like to share their music they are inspired with, and those that like to listen and watch.

For the past five years I have been bringing my 80 year old, Grand Concert Pedal Harp to the Plaza, mounted on the custom built electric powered HarpMobile. Often I am asked if I am handicapped, and my answer is no, my body works fine, and yes, moving around over 160 pounds of harp and gear is a handicap. I used to love the feeling that something was being shared that brought joy and wonder to children who may have never seen or heard up close a big harp, and wake up the inner child within us all, that is moved by the sounds of plucked strings, and the glistening tones that come from it. I feel harps are like the Ferrari's of the musical world, looking perfectly good when either in motion and in play, or sitting still and silent. Harps inspire the sense of wonder, magic and fantasy that only they can. Visually and sonically. It was my pleasure to be the ambassador of this amazing instrument, bringing it to places, and plazas that do not often get such royalty in their midst. Since this past May, when the new busker regulations came into effect, I have been on the Plaza only once this entire Summer. During the previous 4 years, I was there at least 15 times per month, usually around the noon hour for the allowed 2 hours. I feel the baby was thrown out with the bathwater, when the city council passed these harsh new laws limiting the locations, times and how one might share their musical gifts. Part of my unique musical signature is how I have 58 special sensors built into my harp. This is not allowed under the new regulations, even if I am not as loud as non amplified instruments like accordions, banjos, wind or percussion instruments. I understand it was to get rid of panhandlers and those few disrespectful buskers that abuse the rights of others, but I feel it has been taken too far into the realm of repression and restriction. Cannot common sense prevail instead of common non-conscious control?

It was my special service that I was so happy to be used for. My reward was to be told that I made the day for some, and brought others out of their bummers and blues. The tips were not bad either, and it taught me that every donation to this musical gift I was sharing was the way the public could share their appreciation. Saying 'Thank you' to every contribution, no matter how big or small, taught me gratitude and filled me with a deeper purpose and satisfaction of how to serve our fellow man. Never asking for money, but happy to be gifted in return for sharing what I love most. It felt perfect in its

way, and most pleasing to feel this one was making a difference in the lives of others who happened upon my wild flowers and mushrooms.

Where have all the flowers gone?

Roark Barron has lived in Santa Fe since the late 60's. His four children were all born in the home his family, and he built out at the end of the Santa Fe Trail, starting ten years later. They have all remained in this city different they also love. His original harp sound, and compositions are featured on 11 CD's, and at RoarkBarron.com. He plays concerts, The Plaza, churches, hotels, gallery openings, and private parties. He was part of the duo, Luscious Music, during the 80's and 90's. He has won numerous New Mexico Music Industry awards over the 30 years he has been playing professionally. He also now teaches. Roark created a Sonic Sculpture, the WindHarp in the early 80's. Exhibited at Shidoni, and featured in the Guinness Record Book 1984-89 as the World's Largest Harp.

Roark will be performing solo at the Lensic, on November 14, as part of the Sacred Body Event. <http://sacredbodysantafe.com/>

Narrative 3: JOHNNY ALSTON - NATIVE AMERICAN FLUTE PLAYER

Was playing music softly on the plaza Saturday morning around 1030 when the police came over and told me I could not use an amp on the plaza until 1 o'clock. I explained to him that I had been playing on the plaza for the last 12 years in the morning and all the visitors and the people who live in Santa Fe come to the plaza and like the music because it was so peaceful and calming.he stated that he had told me before and then proceeded to write me a ticket to go to court.went to court on the date stated and told the clerk I could not make it on that date because I was going out of town and she said to call her when I got back to schedule another date and she would not write a warrant for my arrest. when I returned from out of town there was a warrant

for my arrest in the mail. Called The courthouse and she said to appear on the date that was on the warrant. Went to court on that date, had the trail and the Judge sent for the City rules and they sent her the supposedly the busker rules and could not find anything about using an amp. and also could not read what the officer wrote into his hand writing. Then gave me a look like this is ridiculous and dismissed the charges.

Narrative 4: Kasia Darling - HENNA ARTIST on trying to obtain a busking license

This past summer I went to the city office to apply for a buskers license so that I could do henna art on the plaza. The person at the window told me that henna art is not a performance art. He said it was a service, more like a massage and therefore does not qualify as busking. I was told that I could get a business license to do henna art if I had a local business who would allow me to use their address and sit in front of their store and that I would need a NM tax Id. So I went and got a tax id number and took it back to the busking office and they said i did not qualify for a business license and wondered where i got that idea. Then they sent me to the office in the basement where I was given a large packet of information about becoming a business in Santa Fe, was asked to provide a map of my house and various documents showing my business status.

Narrative 5: GEORGE ROBINSON - HARMONICA PLAYER

I do not feel safe performing in downtown Santa Fe. I feel like a criminal in the act, looking over my shoulder for anyone who might catch me in the act of creativity. This truly diminishes my pleasure and my life. It used to be that I came to the Plaza to perform, to emit joy, beauty, spontaneity. To elicit smiles. To provide the background for happiness, life, romance. To witness spontaneous dancing, hand holding, kissing. To enrapture children with the joy of music. To provide solace to those who need it. To evoke tears of joy. To create a spirit of freedom, happiness, fulfillment of human potential in the small space of the Plaza. To feel human. To transact spiritually with others. This is why I busk.

I can no longer do this. I am trapped by legalities and those who conspire to make those legalities their weapon to destroy my creation and the creation of others. It makes me sad.

**Narrative 6: MICHAEL J. COMBS - TRADITIONAL MUSIC PERFORMER
AND ORGANIZER OF THE SANTA FE BUSKERS ALLIANCE**

My name is Michael Combs, I have been a street singer in Santa Fe since 1984, when busking was illegal. I along with others worked with the city to allow free expression. This resulted in a workable ordinance.

During the last year, since former councilor Chris Calvert's motion to add restrictions, remove the thirty-day permit, restrict times for buskers, and drastically restrict times when amplifiers are permitted, I have had dread of going downtown.

I have seen police ignore unpermitted amplified buskers, half a dozen police nearby. I have seen friends harassed and prohibited from performing even though they were observing all requirements. I have had friends come to town to busk and been denied permits. I have had many stories come to me by law abiding buskers of bullying of buskers.

And this has all conspired to inhibit me from going out and earning a living. I feel that we are viewed as low-status citizens, legitimate outlets for officers' pent-up frustrations, with very little possibility of any consequences for police.

Also I feel we've been used as a tool for the assistant city attorney to burnish his reputation as a tough, crack-down, strong advocate for business interests, again at very little risk to himself, as we buskers are economically and politically practically without any effective power.

This has all conspired to intimidate my busking activities, with resultant harm to my well-being because of a lower income.

Narrative 7: BOBBY NOFCHISSEY - NATIVE AMERICAN JEWELER, SONGWRITER AND PERFORMER

Things were much better before the changes were made. The majority of the Buskers were co-operating among themselves before a very few vendors and merchants used them as scapegoats for a failing economy. The musicians were bringing welcomed entertainment to the people that frequent the Plaza area, the tourists and many locals.

The way things are now has just about killed the spirit and joy the buskers brought to the Plaza. Many are fearful of being harassed by the many overly restrictive rules placed upon them. Many have lost the will to go through all the trouble caused by the new rules to share their wonderful talents freely with the public and the public suffers because of it.

The buskers are NOT CRIMINALS

All that seems to be occurring is harassment by Police trying to enforce rules and regulations that violate the buskers' constitutional rights. The right to express oneself freely publicly and the public's right to do the same by offering tips in appreciation. This is not an act of commerce. It is freedom of speech and expression.

I would go back to the rules that were in place before changes were made. At least they did not interfere so much with the spirit of street performing that gave Santa Fe its richness in musical art. Santa Fe is supposed to be the city different. It is different now but in a bad way. Bring back the difference that made it different in a good way.

Narrative 8: JON HOGAN'S & MARIA MOSS - TRAVELING BUSKERS

I am a traveling musician, performing across the United States, and have enjoyed busking in Santa Fe during previous swings through the region. I've played at venues in Santa Fe, Taos, Jemez Springs, Colorado, Texas, Montana, Idaho, etc.

While traveling through Santa Fe during september, 2014, with my musical partner, Maria Moss, we arrived in town the day before a gig and wanted to busk. We love busking, for the energy, the people, the opportunity to share our art, and it augments our income. We made a point to arrive in town before city hall closed, so we could get a license. We knew from friends that the \$10, one-month license we'd previously been able to get had been withdrawn by recent city council action, and that we'd have to buy a \$35, one-year permit, even though we'd be able to busk only an evening.

Maria was unable to come with me to city hall, and sent her drivers license. I was told by a very unhelpful city employee that i could only get a license for maria and I to perform if she were physically present at the time of the permit being issued, that if i pulled a permit for myself, and anyone else came and performed with me, we would be ticket & fined.

Instead of being welcomed as artists wanting to enliven your city, we were met by mean-spirited hostility. we were very disappointed not to be able to busk in Santa Fe this year.

Jon Hogan, Maria Moss

(dictated to & writ down by J. Michael Combs, 12 september 2014)

Narrative 9: J. MICHAEL COMBS' STORY, II

I was packing up my gear after finishing a performance on the santa fe bandstand on a monday in early July. The performance ended at 1p, and this was about 1:20p.

I saw a fellow busker, Petra Babankova, who plays classical guitar with a very small amp, set up in the shade of some trees on the plaza. Then i saw her accosted by several police officers, and a few minutes later she was busking in the middle of palace avenue, just off the NW corner of the plaza.

As soon as i could i went over and asked her what had happened. it was a very hot day for santa fe, like 90+°, and that is very hard not only for the busker but also on a wooden musical instrument.

Peta has already been limited to busking only two hours a day since recent city council decisions have enacted restrictions on amplifiers. She is one of the buskers who cannot work without an amp, and so is suffering a severe drop in work opportunities. Also, the hours she is allowed to work, 1-3p, are the very worst hours for busking. everyone has had their lunch, they are drowsy, and they head for their hotel room for a nap if they are a visitor, or back to work if they are a local. It is dead during the afternoon, after the lunch hour. Morning, lunch hour, evening and night times are when people who work in the entertainment industry, including buskers, have opportunity to work. Imagine yourself, whoever reads this, being forbidden to work more than two hours a day. could you support your family? (Petra has 4 children) could you keep your house?

When i asked, Petra told me the police had told her she was not allowed to busk the plaza area while equipment is set up on the bandstand. that means that from 10:00 a.m. until 10:30p.m., five days a week, during July & August, and evenings part of June, buskers are forbidden to participate in the tourism economy here in Santa Fe.

I asked the police officers to explain this to me, they were unable. I asked the city events co-ordinator, the assistant city attorney, the Outside In director (who produces the santa fe bandstand), and none of them had any idea why this was, none of them had intended the rules to read that way. It was not written down anywhere like this. yet there it was, police stopping a busker from working.

in case you haven't heard her, Petra plays beautiful, soothing, tasteful variety of music on her classical guitar, and supports herself, her children and aged parents on her musicians income, of which busking

is a large portion. While we buskers often get gigs, quite often those gigs and CD sales are facilitated by the connections we make with people while out there in the world, giving away our music for free. she plays "Bach to Beatles," and cannot be heard without the very slight amplification she uses. she is also a professional, has busked internationally, and never, ever rouses complaints. She invariably asks adjacent merchants and vendors before setting up, even while setting up in a place she's already played hundreds of times before. This is professional busker courtesy.

The upshot of it was that the police seargent, Chris McCord, invented this interpretation himself, and instructed his officers to enforce it. when police make the laws, it is technically known as a police state.

It took me a lot of effort and phone calls to get this draconian, illegal restriction suspended. This is arbitrary, tyrannical, oppressive use of police power. To buskers, it is typical. We are viewed as low-status people, hardly meriting the rights of citizens, legitimate targets for police bullying.

SHANDLER, ZACHARY A.

From: john alston <nailmanjha@yahoo.com>
Sent: Friday, October 10, 2014 7:27 AM
To: SHANDLER, ZACHARY A.
Subject: Buskers

1. The ordinance makes matters worse. police do not know what they're doing and make up their own rules. 2. should not be a police matter. 3. we changed the rules about amplification and the time should not be a time from 1 to 3 should be all day long. A lot of good musicians are not coming to Santa Fe because of this rule. Simple solution just keep the volume low. some people and their instruments such as native flutes need amplification to be heard.

SHANDLER, ZACHARY A.

From: Robert Andreotti <rjandreotti@yahoo.com>
Sent: Wednesday, October 01, 2014 12:36 PM
To: SHANDLER, ZACHARY A.
Cc: Gunther Maier; Elizabeth Pettus; Valerie Fairchild; John Dressman
Subject: Ordinance questionnaire

Hi Zack,

Elizabeth gave me a copy of your busker ordinance questionnaire, and asked me to send comments.

I believe that the 2014 Street Performer Ordinance improved matters on the Plaza. I also believe that the increased police presence has been a productive step.

Specific comments:

-It is possible that the city is not explaining the rules to new buskers. In one example, a busker set up in a prohibited place. He had a brand new license, but he said that no one had told him about any rules. I don't know if this is an exceptional circumstance, whether the busker was truthful, etc.

-We have seen that police are neither familiar with the rules nor interested in enforcing them. Perhaps persons other than police would be better at busker enforcement. This summer, for example, Barbara Lopez did a great deal of patrolling in the Plaza to make sure people were following rules. However, she is in charge of special events only. We could use a person like Barbara for everyday enforcement.

-Many performers have a demonstrable lack of talent. I believe this is a net negative for the Plaza atmosphere. Perhaps we should consider some form of vetting, however subjective that might be.

-An enhanced police presence in the Plaza is not best accomplished simply with large numbers of patrol cars parked at Plaza Diner. After a point, many vehicles are distressing instead of comforting.

Thanks again for your efforts in the Plaza. I hope this email finds you well.

Bob Andreotti

SHANDLER, ZACHARY A.

From: g <harpleblues@gmail.com>
Sent: Tuesday, September 23, 2014 11:12 AM
To: DIMAS, BILL; DOMINGUEZ, CARMICHAEL A.; RIVERA, CHRISTOPHER M.; MAESTAS, JOSEPH M.; GONZALES, JAVIER M.; IVES, PETER N.; TRUJILLO, RONALD S.; LINDELL, SIGNE I.; BUSHEE, PATTI J.
Cc: Talia Kosh; Ben Baur; SHANDLER, ZACHARY A.
Subject: Street Performer Ordinance Review

Dear Councilors and Assistant City Attorney,

The Buskers Alliance will provide a written statement as requested by Zach Shandler. We should be able to provide this within two weeks.

We would like to know when the review will take place, and the format of the review process.

Thank you,
George Robinson
Santa Fe Buskers Alliance

SHANDLER, ZACHARY A.

From: SHANDLER, ZACHARY A.
Sent: Tuesday, September 09, 2014 4:19 PM
To: 'g'
Cc: Ben Baur; Talia Kosh
Subject: RE: Busking Ordinance Review

Dear All:

Good afternoon. I will start collecting information and written input next week from interested parties. Does the Alliance wish to submit a written letter based on your observations of the summer?

Thank you,
Zack Shandler
City Attorney's Office
(505) 955-6303

From: g [<mailto:harpleblues@gmail.com>]
Sent: Tuesday, September 02, 2014 12:54 PM
To: DIMAS, BILL; DOMINGUEZ, CARMICHAEL A.; RIVERA, CHRISTOPHER M.; MAESTAS, JOSEPH M.; GONZALES, JAVIER M.; IVES, PETER N.; TRUJILLO, RONALD S.; LINDELL, SIGNE I.; BUSHEE, PATTI J.; SHANDLER, ZACHARY A.
Cc: Ben Baur; Talia Kosh
Subject: Busking Ordinance Review

Dear Councilors and Assistant City Attorney,

It is nearing October and the Busker's Ordinance will be coming up for review. Has a date and format been decided for this review? The Alliance would like to formally participate in the process.

Thanks you,
George Robinson



2014 Street Performer Ordinance Change Evaluation

1. Do you feel that the 2014 Street Performer Ordinance changes improved matters on the Plaza?

YES

NO

Please explain below.

We did have constant dueling performers on the plaza. Some performers did not go with the historic significance of the plaza.

2. Do you feel that the increased police presence on the Plaza was a productive step to help implement the 2014 Street Performer Ordinance?

YES

NO

Please explain below.

Tourist constantly gave us feed back on how safe they felt walking around the plaza.

3. What would you change or add to for the Street Performer Ordinance?

Better enforcement on the amplification & 2 hr limit for street performers. Some street performers are still too loud.

Please return completed evaluation to: Zachary Shandler, Assistant City Attorney (by delivery at City Hall at 200 Lincoln Avenue) or by email at Zashandler@ci.santa-fe.nm.us by October 15, 2014.

Thanks for responding!